

FISCAL NOTE

HB 2575 - SB 2697

March 29, 2004

SUMMARY OF BILL: Establishes the regulatory framework for annual events operated for the benefit of a 501(c)(3) organizations pursuant to Article XI, Section 5 of the Constitution of Tennessee. Upon approval of a two-thirds vote of all members elected to each house of the general assembly, an annual event involving a lottery may be operated for the benefit of a 501(c)(3) organization located in this state. The bill would require 501(c)(3) organizations to obtain a permit from the Secretary of State prior to conducting an annual event. The Secretary would issue the permit for the annual event if the organization satisfies the application requirements, pays the application fee and is a valid 501(c)(3) entity that has not conducted an annual event during the previous year. The bill explicitly states bingo or casino games shall not be included as permissible. Further, the bill provides no 501(c)(3) organization shall conduct an annual event without receiving a permit for such an event from the Secretary.

The bill provides the process for establishing professional fund raising event counsel and managers. In order to act as a professional fund raising event manager for any 501(c)(3) organization, a person must complete an application, pay an annual registration fee of \$800 and submit a \$25,000 bond to be approved by the Secretary of State. To qualify to be registered as an event manager, the person must not have been convicted within the past five years of any violation of this bill or of any felony. A manager would have the responsibility to ensure that the manager's employees who work in conjunction with any annual event are registered and bonded. In order to act as a professional fund raising event counsel for any 501(c)(3) organization, a person must complete an application, pay an annual registration fee of \$250 and submit a \$25,000 bond to be approved by the Secretary.

The bill would require professional fund raising event managers to file an annual report for an annual event with the Secretary of State within 90 days after the event has been completed. The report would include gross revenue and an itemization of all expenditures from those funds and would be audited by an independent certified public accountant. A manager or counsel who does not receive funds on behalf of a 501(c)(3) organization, does not have access to funds raised, and does not make deposits or have signatory authority for the organization would not be required to file an audited financial statement. Instead, such manager or counsel would be required to file a financial report providing itemization of expenses, costs, reimbursements and fees the organization is charged for each annual event. The report would be due within 90 days after the completion of the event.

The Secretary of State, upon its own initiative or complaint of any person, upon reasonable grounds, would be authorized to publicly or privately investigate any 501c(3) organization, manager or counsel or other person to determine whether there is a violation of the provisions of this act. The Secretary may visit, investigate, or place investigative personnel in the office or places of operation of a 501c(3) organization, professional fund raising event counsel, or professional fund raising event manager. The Secretary would be allowed to impose a civil penalty of not more than \$5,000 for any violation of the bill. Upon notice by the Secretary that sanctions should be imposed, the affected party may seek review of that decision by requesting a hearing, to be conducted in accordance with the UAPA. Any person who intentionally files false information required to be filed by the provisions of this bill or intentionally fails to file any information required by the provisions of this bill commits a Class E felony, punishable by one to six years in prison and a fine not to exceed \$50,000.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures:

\$43,000 One-Time FY04-05/Secretary of State

\$829,000 Recurring FY04-05/Secretary of State

\$39,000 One-Time FY05-06/Secretary of State

\$2,031,000 Recurring FY05-06 Secretary of State

\$1,700/Incarceration* FY-04-05

Increase State Revenues - \$116,000 FY04-05

\$549,000 FY04-05

Less than \$100,000 from fines FY04-05

Less than \$100,000 from criminal penalties FY04-05

Estimate assumes:

- Application fee will be set at \$125.
- There are approximately 17,000 organizations (excluding private foundations) which hold themselves out as 501(c)(3) organizations in Tennessee according to the Internal Revenue Service 2002 Masterfile. The IRS estimates that approximately 5,000 of the 17,000 are required to annually file a Form 990 (the remaining 12,000 include churches and organizations with gross revenue not exceeding \$25,000 each taxable year and therefore not required to file the annual financial report).
- The cost estimate assumes 10% of the 17,000 organizations exempt under IRS section 501(c)(3) (1,700) will apply for approval to conduct approved forms of lottery games in the second and subsequent years. In addition, it is estimated that 100 counsel and 100 managers will also apply in FY05-06. It is estimated that 500 organizations, 25 counsel and 50 managers will apply during the first year of implementation (FY04-05).
- Assumes that the provision prohibiting organizations from participating in annual event activities for three years for late-filed reports will reduce late filed records.
- Assumes three investigators in FY04-05 and 12 investigators in FY05-06 to handle the investigative responsibilities required by the bill.

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- The bill does not restrict participation to in-state 501(c)(3) organizations. Second-year revenues assume increased filings by out-of-state organizations.
- Any cost to the District Attorneys General Conference to provide the necessary prosecutorial resources to deal with any infractions of the law, is estimated to be not significant and can be handled with existing staff and budgeted resources.
- Assumes one conviction of a Class E felony every three years.

Details of this estimate are shown below:

FY04-05 Expenditures

Personnel costs including benefits (10 positions)	\$677,987
Travel	35,000
Rent	105,000
Equipment/furniture (one-time)	42,500
Training	1,500
Printing, supplies, communication	<u>9,000</u>
Total FY04-05	<u>\$870,987</u>

FY04-05 Revenues

501(c)(3) Charities (500 x \$125)	\$62,500
Professional fundraising event Counsel (25 x \$250)	6,250
Professional fund raising event Managers (50 x \$800)	40,000
Employees (150 x \$10)	1,500
Late fee assessment (20% of total filers x \$75 – 3 mo.	
Late filed documents x \$25)	<u>5,625</u>
Total FY04-05	<u>\$115,875</u>

FY05-06 Expenditures

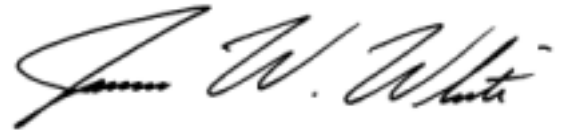
Personnel costs including benefits (24 positions)	\$1,716,604
Travel	180,000
Rent	105,000
Equipment (one-time)	38,600
Training	4,000
Printing, supplies, communication	<u>25,000</u>
Total FY05-06	<u>\$2,069,204</u>

FY04-05 Revenues

501(c)(3) Charities – new applicants (1,700 x \$125)	\$212,500
Renewals (fee based upon prior year revenue)	
(150 x \$300) = \$45,000	
(150 x \$400) = \$60,000	
(200 x \$500) = \$100,000	205,000
Professional fund raising event Counsel (100 x \$250)	25,000
Professional fund raising event Managers (100 x \$800)	80,000
Employees (300 x \$10)	3,000
Late fee assessment (20% of total filers x \$75 – 3 mo.	
Late filed documents x \$25)	<u>23,700</u>
Total FY05-06	<u>\$549,200</u>

CERTIFICATION:

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "James W. White". The signature is fluid and cursive, with the first name "James" written in a smaller, more compact script than the last name "White".

James W. White, Executive Director

**Section 9-6-119, TCA, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law.*